

**(1) Waiver of Accounting and Report of Executor; and (2) Petition for Its Settlement and (3) Waiver of Executor's Commissions and (4) for Allowance of Statutory Attorney's Fees and Costs Reimbursement and for (5) for Final Distribution**

<b>DOD:12-13-08</b>			<b>EDWARD A. RIOS</b> , Executor with Full IAEA without bond, is Petitioner.  Accounting is waived.  I&A: \$225,500.00 POH: \$225,000.00 (real and personal property, no cash)  Executor (Statutory): Waived  Attorney (Statutory): \$7,510.00 (Allocated by agreement between the Executor's former attorney Patricia Bone O'Neill \$1,320.00 and Attorney Gary G. Bagdasarian \$6,190.00)  Costs: \$1,046.50 (\$325.00 to Attorney Patricia Bone O'Neill for publication, and \$721.50 to Attorney Gary G. Bagdasarian for certified copies, appraisal, filing)  <b>Distribution pursuant to Decedent's Will and various agreements between heirs:</b> <ul style="list-style-type: none"><li>Personal property: to Barbara Rios, David Rios and Edward Rios pursuant to agreement</li><li>Millbrook real property: Barbara Rios, David Rios and Edward Rios, in undivided 33 1/3 interests each</li><li>Floradora real property: Barbara Rios and Edward Rios, in undivided 50% interests each</li><li>David Rios: \$10,000.00 lien on real property</li></ul>	<b>NEEDS/PROBLEMS/COMMENTS:</b>
	<b>Aff.Sub.Wit.</b>			
✓	<b>Verified</b>			
✓	<b>Inventory</b>			
✓	<b>PTC</b>			
✓	<b>Not.Cred.</b>			
✓	<b>Notice of Hrg</b>			
✓	<b>Aff.Mail</b>			
	<b>Aff.Pub.</b>			
	<b>Sp.Ntc.</b>			
	<b>Pers.Serv.</b>			
	<b>Conf. Screen</b>			
✓	<b>Letters</b>			
	<b>Duties/Supp</b>			
	<b>Objections</b>			
	<b>Video Receipt</b>			
	<b>CI Report</b>			
✓	<b>9202</b>			
✓	<b>Order</b>			
	<b>Aff. Posting</b>			
	<b>Status Rpt</b>			
	<b>UCCJEA</b>			
	<b>Citation</b>			
✓	<b>FTB Notice</b>			
			<b>Reviewed by:</b> skc	
			<b>Reviewed on:</b> 5-28-13	
			<b>Updates:</b>	
			<b>Recommendation:</b> SUBMITTED	
			<b>File 1 – Rios</b>	

Age: 12 years  
DOB: 10/31/2000

Cont. from 022112,  
050112, 061212,  
081312, 100112,  
012813, 040213

Aff.Sub.Wit.

Verified

Inventory

PTC

Not.Cred.

Notice of  
Hrg

Aff.Mail

Aff.Pub.

Sp.Ntc.

Pers.Serv.

Conf.  
Screen

Letters

Duties/Supp

Objections

Video  
Receipt

CI Report

9202

Order

Aff. Posting

Status Rpt

UCCJEA

Citation

FTB Notice

**ELENA PENA**, sister, was appointed Guardian of the Person and Estate on 07/26/11 and Letters were issued on 07/28/11. Minute order dated 6/12/12 removed Elena Pena and appointed the Public Guardian.

Status Report filed 5-8-13 states all insurance funds from both MetLife and Prudential have been received.

#### NEEDS/PROBLEMS/COMMENTS:

### OFF CALENDAR

Declaration of Deputy Public Guardian Renee Garcia filed 5-8-13 indicates all funds have been received.

Note: The Court will set a status hearing for the filing of the first account – date to be determined

Reviewed by: KT / skc

Reviewed on: 3-20-13

Updates: 3-28-13

Recommendation:

File 2 – Robinson-Cervantes

## (1) Petition for Final Distribution on Waiver of Accounting and (2) for Allowance of Statutory (Prob. C. 10400-10406, 10954, 11600-11642)

DOD: 07/23/10		<b>MICHAEL TARASEVIC</b> , Executor, is Petitioner.		<b>NEEDS/PROBLEMS/COMMENTS:</b>	
				See Page 3B for Petition for Allowance of Ordinary and Extraordinary Fees to Attorney.	
		I & A - \$135,867.00		<u>Note:</u>	
		POH - \$58,252.43		The distribution stated in this Petition is if all requested fees and expenses are approved, which includes those attorney's fees requested in the Petition for Allowance or Ordinary and Extraordinary Fees to Attorney (Page 3B).	
Cont. from 112811, 022712, 040912, 080712, 100512, 110912, 021113, 031113, 042613		Executor - <b>waives</b>		1. Need revised Order stating the dollar amount of distribution to each beneficiary pursuant to Local Rule 7.6.1	
Aff.Sub.Wit.		Costs - \$938.50 (for Publication, Filing Fees, Certified Copies, Probate Referee)			
✓	Verified				
✓	Inventory	<b>Distribution, pursuant to decedent's Will, is to:</b>			
✓	PTC	Michael Tarasevic -			
✓	Not.Cred.	\$25,703.07 cash, plus ½ interest in real property and ½ interest in a 1977 truck			
✓	Notice of Hrg	Anthony Tarasevic -			
✓	Aff.Mail	w/	\$25,703.07 cash, plus ½ interest in real property and ½ interest in a 1977 truck		
	Aff.Pub.				
	Sp.Ntc.				
	Pers.Serv.				
	Conf. Screen				
	Letters	11/30/10			
	Duties/Supp				
	Objections				
	Video Receipt				
	CI Report				
✓	9202				
	Order	x			
	Aff. Posting			Reviewed by: JF	
	Status Rpt			Reviewed on: 05/29/13	
	UCCJEA			Updates:	
	Citation			Recommendation:	
✓	FTB Notice			File 3A - Tarasevic	

## (1) Petition Allowance of Ordinary and Extraordinary Fees to Attorney

DOD: 07/23/10		<b>MICHAEL TARASEVIC</b> , Executor, is Petitioner.  <b>Petitioner</b> acted Pro Per on behalf of the estate until 02/21/12, when he retained attorney Stefanie J. Krause.  Attorney Krause has rendered legal services in the administration of the estate since 02/21/12.  I & A - \$135,867.00 Statutory Fee - \$4,506.01  Petitioner estimates that the total amount of ordinary compensation to which Stefanie Krause is entitled is \$3,437.80 and that Petitioner's prorated portion is \$1,068.21 (which Petitioner has waived).  Attorney - \$3,437.80 (portion of ordinary compensation)  Attorney x/o - \$1,720.00 (for negotiation of creditor's claim payoff, attempts to obtain a loan against the real property asset of the estate, sale of real property and order confirming sale.)  <b>Total fee Request by Attorney - \$5,157.80</b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>  <u>CONTINUED FROM 04/26/13</u>	
Cont. from 042613				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail			w/
<input type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			
<input type="checkbox"/>	Conf. Screen			
<input type="checkbox"/>	Letters			
<input type="checkbox"/>	Duties/Supp			
<input type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			

Reviewed by: JF
Reviewed on: 05/29/13
Updates:
Recommendation:
File 3B - Tarasevic

Petition to Compel Trustee to Account; for Accounting by Attorney in Fact; for Further Accounting; for Elder Fiduciary Abuse; for Constructive Trust, and for Damages [Prob. C. 17200 et seq, 4500 et seq; 16000-16006; 16040; 16060; 16062-16063; 16400; 16420 and 16440 et seq; W&I C. 15657, 15610.30]

			<b>CYNTHIA F. HILL and LEWIS C. SLAYTON</b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>
			are Petitioners.	<b>Continued from 4/2/13.</b> As of 5/30/13 the following issues remain:
			<b>Petitioners allege:</b> On 7/29/2009 the Slayton Family Grantor Trust was created. The grantor of the Trust was Jesse C. Slayton; the Trustee of the Trust was Jesse's niece, Debbie Slayton.	<ol style="list-style-type: none"> <li>Petition also requests relief for the Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust dated June 1, 2005. <b>The Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust is not before the court and therefore the court cannot make orders with regard to said trust.</b> A separate action will need to be commenced regarding issues involving the Jesse C. Slayton and Martha Jane Slayton Revocable Trust.</li> <li>Page 2, line 9 &amp; 10 of the Petition states trust assets are distributable to Cynthia F. Hill, Lewis ("Rusty") C. Slayton, and Shirley Alexander. However, page 2, line 12 states the assets are distributable to Cynthia F. Hill, Jesse C. Slayton, Jr. and Shirley Alexander. The court may require clarification.</li> </ol>
<b>Cont. from 110112, 040213</b>			The Slayton Family Grantor Trust was actually established on behalf of Jesse by Debbie Slayton who executed the Trust document as Jesse's attorney-in-fact. Jesse had previously executed a durable power of attorney on 5/3/2005.	
	<b>Aff.Sub.Wit.</b>		By its terms, the Trust was irrevocable upon formation. Its stated purpose is to preserve the financial resources for the use, benefit and enjoyment of the primary beneficiaries. The primary beneficiaries of the Trust were Jesse during his lifetime and upon his death, the assets are to be distributed to the children of Jesse, namely Cynthia F. Hill, Lewis ("Rusty") C. Slayton and Shirley Alexander.	
✓	<b>Verified</b>		Jesse died on 10/2/2010. Pursuant to the terms of the Trust the assets are distributable to Cynthia F. Hill, Lewis ("Rusty") C. Slayton, and Shirley Alexander.	
	<b>Inventory</b>		Petitioner is informed that following the death of Jesse, the Trustee sold the Trust's real property to Bobby Slayton and Joyce Slayton, for consideration of \$180,000.00.	
	<b>PTC</b>			
	<b>Not.Cred.</b>			
✓	<b>Notice of Hrg</b>			
✓	<b>Aff.Mail</b>	W/		
	<b>Aff.Pub.</b>			
	<b>Sp.Ntc.</b>			
	<b>Pers.Serv.</b>			
	<b>Conf. Screen</b>			
	<b>Letters</b>			
	<b>Duties/Supp</b>			
	<b>Objections</b>			
	<b>Video Receipt</b>			
	<b>CI Report</b>			
	<b>9202</b>			
✓	<b>Order</b>			
	<b>Aff. Posting</b>			
	<b>Status Rpt</b>			
	<b>UCCJEA</b>			
	<b>Citation</b>			
	<b>FTB Notice</b>			
			<b>Please see additional page</b>	<b>Please see notes to Judge on last page.</b> <b>Reviewed by: KT</b> <b>Reviewed on: 5/30/13</b> <b>Updates:</b> <b>Recommendation:</b> <b>File 4A - Slayton</b>

The sale was made to a related party without a broker. Bobby Slayton is the brother of the settlor, Jesse C. Slayton, and Joyce Slayton is the wife of Bobby Slayton. Bobby Slayton and Joyce Slayton are the parents Debbie Slayton, the Trustee.

Petitioners were advised of the sale and are informed and believe that the consideration for the sale of the residence was not unreasonable notwithstanding the relationship between the Trustee and the purchasers of the property.

Following the sale, the Trustee distributed cash in the amount of \$65,000 to each of the three beneficiaries. The Trustee indicated that each of the beneficiaries were to receive at least \$20,000.00 more; however no additional funds have been distributed to the beneficiaries, nor has any additional information been provided to the beneficiaries.

Pursuant to California law, the Trustee is required to account to the beneficiaries of the Trust. On February 23, 2011, counsel for Petitioners served a demand for an accounting on the Trustee, Debbie Slayton.

To date, an accounting has not been received from the Trustee.

Wherefore, Petitioners request this court to order the Trustee to render an accounting of the administration of the Trust, in the form and manner prescribed by law.

Petitioner further requests a review of the acts of the attorney-in-fact and for further accounting by attorney-in-fact.

Petitioner alleges Jesse C. Slayton was married to Martha Jane Slayton for more than 49 years. Martha died in July 2008. Petitioners believe that Jesse and Martha previously established a Revocable Living Trust Agreement known as the **“Jesse C. Slayton and Martha Jane Slayton Revocable Living”** dated June 1, 2005 (the Jesse and Martha Trust). A page entitled “Overview of pertinent Information” is attached as Exhibit F; the document indicates that the Jesse and Martha Trust may have been established by Jesse C. Slayton individually, and acting as Attorney-in-Fact for his wife, Martha. Petitioners have been unable to obtain a copy of the Jesse and Martha Trust.

Petitioners further believe, based on statements made by Jesse C. Slayton that prior to the establishment of the Jesse and Martha Trust, he had cash assets in excess of \$400,000.00.

Petitioners believe that at some time prior to July 29, 2009, Debbie Slayton became trustee of the Jesse and Martha Trust. On July 29, 2009, Debbie Slayton signed an “Affidavit of Change of Trustee,” declaring that the former Trustee, Jesse C. Slayton was incapacitated, and that she has succeeded to the position of trustee.

**Please see additional page**

**4A (additional page 2 of 4) Slayton Family Grantor Trust (Trust) Case No. 12CEPR00829**

On 11/29/2009, a deed was recorded transferring Jesse's residence from Debbie Slayton as Trustee of the Jesse and Martha trust to Jesse C. Slayton, a married man. On that same day, there as a recorded deed transferring the residence from Jesse C. Slayton, a married man, to Debbie Slayton, Trustee of the Slayton Family Grantor Trust dated July 29, 2009.

Petitioners believe that following Martha's death, Jesse was the primary beneficiary of the Jesse and Martha Trust.

Petitioners believe that Debbie Slayton, as successor Trustee of the Jesse and Martha Trust and/or as attorney in fact for Jesse Slayton, transferred and/or dissipated assets of the Trust, or assets belonging to Jesse Slayton to and for her own benefit and/or transferred same to third parties, the identities of whom is unknown to Petitioners.

Petitioners allege that Debbie Slayton regularly used Jesse's credit card for her personal benefit. After Jesse's death, a family member observed that Debbie "like[d] spending your uncle Charlie's money" (referring to Jesse C. Slayton, who was known as "Uncle Charlie" to some family members).

Wherefore, Petitioners request that Debbie Slayton account for her actions as attorney in fact of Jesse C. Slayton from 5/3/2009, and any and all actions taken as trustee of the Jesse and Martha Trust, in the manner prescribed by law.

Petitioners allege that in administering the Trust after the death of Jesse C. Slayton, the Trustee Debbie Slayton breached one or more fiduciary duties owing to the beneficiaries of the Slayton Family Trust, including without limitation, the duty to administer the trust solely in the interest of the beneficiaries; the duty to preserve trust property; and the duty to make trust property productive. As a result of the Trustee's actions, Petitioners have been damaged by the loss of their beneficial interest in the trust, in an amount according to proof. That as a result of the Trustee's actions, petitioners have been further damaged in that Petitioners have been required to retain an attorney and incur attorney's fees to assert their rights to trust property, and against the Trustee, in an amount according to proof. That the actions of the Trustee were outrageous and intentional and as such the Trustee's conduct should be punished by an award of exemplary damages against the Trustee and in favor of the beneficiaries.

At all times alleged in this petition, Jesse C. Slayton was elderly and over the age of 65 years old. For a number of years prior to his death, commencing in 2004 or early 2005, Debbie Slayton lived in Jesse's residence under an agreement that she would provide for his need and would receive room and board and a monetary stipend. She occupied the position of care custodian until approximately 2008 when Jesse's declining health required that he move into Sierra Villa, a care facility.

**Please see additional page**

Petitioners allege, for some years prior to his death, Jesse was suffering from diminished mental capacity, was subjected to being taken advantage of by the Respondents. Respondents exercised complete dominion and control over Jesse's assets and gained knowledge of his assets and property.

In addition, Debbie Slayton sequestered and prevented Jesse from having contact with other family members, including Petitioner, Cynthia F. Hill, specifically stating that Cynthia was not to be permitted to visit with Jesse, her father, unless Debbie was present.

The conduct of Respondents and each of them, resulted in the deprivation of Jesse's assets, which were necessary for his care and ongoing maintenance.

The above-described conduct constitutes financial abuse under Welfare and Institutions Code section 15657 and 15610.30.

Respondents, and each of them are guilty of recklessness, oppression and fraud; respondents and each of them acted with malice against Jesse in the commission of the above described abuse.

Pursuant to Welfare and Institutions Code 15657(a) Respondents and each of them are liable for reasonable attorney's fees and costs necessarily incurred in bringing an prosecuting this claim.

Petitioners believe that Respondents and each of them have wrongfully taken, transferred, concealed and otherwise deprived Jesse of property belonging to the Slayton Family Trust and/or the Jesse and Martha Trust and/or Jesse C. Slayton. Said Respondents may include, without limitation, **Debbie Slayton, Bobby Slayton**, her father, and/or **Joyce Slayton**, her mother.

Bobby Slayton died on 5/13/2012. To Petitioner's knowledge no probate proceedings have been commenced.

Petitioners believe that at the time the property or assets of Jesse C. Slayton and/or the trusts were transferred, the transferees knew the property were assets of the Slayton Family Trust, the Jesse and Martha Trust or Jesse C. Slayton.

As a result of such transfer, the transferees received and held the property or assets as Constructive Trustee for and on behalf of the beneficiaries of the Trust, namely Cindy Hill, Lewis Slayton and Shirley Alexander. Respondents, and each of them, should be ordered to surrender and deliver said property to Petitioners.

Petitioners are unaware of the beneficiaries of the Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust dated June 1, 2005.

**Please see additional page**

**Wherefore, Petitioners pray:**

- 1. That Debbie Slayton be ordered to account and report:**
  - a. For her actions as Trustee of the Slayton Family Trust from July 29, 2009;**
  - b. For her actions as Trustee or Successor Trustee of the Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust dated June 1, 2005;**
  - c. For any and all actions taken as attorney-in-fact for Jesse C. Slayton, pursuant to power of attorney executed May 3, 2005;**
- 2. For damages in an amount according to proof;**
- 3. For exemplary damages in an amount according to proof;**
- 4. For damages assessed on account of acts of elder abuse, including but not limited to actual damages, exemplary and punitive damages, and attorney's fees and costs;**
- 5. For imposition of a constructive trust on Respondents who received assets belonging to or attributable to Jesse C. Slayton, the Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust and/or the Slayton Family Trust;**
- 6. For attorney's fees and costs incurred in bringing this action; and**
- 7. For such other and further relief as the court may deem proper.**

## First and Final Account and Report of Trustee and Petition for Its Settlement

		<b>DEBBIE SLAYTON</b> , Trustee, is petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
		Account period: 5/3/05 – 12/31/10	<b>Continued from 4/2/13.</b> As of 5/30/13 the following issues remain:
<b>Cont. from 040213</b>		Accounting - <b>\$695,755.03</b>	1. Accounting includes both the Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust dated June 1, 2005 and the Slayton Family Trust. <b>The Jesse C. Slayton and Martha Jane Slayton Revocable Living Trust is not before the court and therefore the court cannot make orders with regard to said trust.</b> A separate accounting (in a separate case file) will need to be filed for the Jesse C. Slayton and Martha Jane Slayton Revocable Trust. Need amended accounting to include only the Slayton Family Grantor Trust.
	<b>Aff.Sub.Wit.</b>	Beginning POH- <b>\$437,253.98</b>	
<input checked="" type="checkbox"/>	<b>Verified</b>	Ending POH - <b>\$ 13,959.48</b>	2. Need Notice of Hearing
	<b>Inventory</b>		
	<b>PTC</b>		3. Need proof of service of the Notice of Hearing on: a. Cynthia F. Hill b. Lewis C. Slayton c. Shirley Alexander d. David Knudson
	<b>Not.Cred.</b>		
	<b>Notice of Hrg</b>	X	<b>Please see additional page</b>
	<b>Aff.Mail</b>	X	
	<b>Aff.Pub.</b>		<b>Reviewed by: KT</b>
	<b>Sp.Ntc.</b>		<b>Reviewed on: 5/30/13</b>
	<b>Pers.Serv.</b>		<b>Updates:</b>
	<b>Conf. Screen</b>		<b>Recommendation:</b>
	<b>Letters</b>		<b>File 4B - Slayton</b>
	<b>Duties/Supp</b>		
	<b>Objections</b>		
	<b>Video Receipt</b>		
	<b>CI Report</b>		
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<input checked="" type="checkbox"/>	<b>Order</b>		
	<b>Aff. Posting</b>		
	<b>Status Rpt</b>		
	<b>UCCJEA</b>		
	<b>Citation</b>		
	<b>FTB Notice</b>		

**Additional NEEDS/PROBLEMS/COMMENTS:**

4. Signatures on the accounting including the verification are all copies and not original.
5. Schedule E – Distribution to Beneficiaries indicates \$195,000 was distributed to beneficiaries but does not state the names of the beneficiaries and the amount distributed to each.
6. Exhibit A – Persons Entitled to Notice is blank.
7. Petition does not request distribution of the remaining assets to the beneficiaries.
8. Order does not comply with Local Rule 7.6.1C – Orders distributing property and orders settling accounts shall contain a statement as to the balance of the estate on hand, specifically noting the amount of cash in the balance.

<b>Manfred Schnitzler</b> <b>DOD: 5-21-12</b>		<b>LYDIA SCHNITZLER</b> , sole Successor Trustee of the <b>Schnitzler Family Living Trust dated 11-6-95</b> , is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>  1. The petition lists " <u>all persons who may be interested in the trust</u> ," but does not indicate that the list includes all persons who are " <u>entitled to notice</u> " pursuant to Probate Code §17201.  The Court may require clarification with reference to §17203, which includes any person other than a trustee or beneficiary whose right, title or interest would be affected by the petition and who does not receive notice as a trustee or beneficiary.  Examiner notes that notice to the settlors' grandchildren may be appropriate, because in the event that Gary, Marlene, or Steven predeceases Lydia, they may then be beneficiaries.
		Petitioner states she and Manfred Schnitzler established the trust on 11-6-95. Manfred Schnitzler died 5-21-12, and Lydia is now sole trustee. The trust provides that on the death of Manfred Schnitzler, the trust is to be divided into two sub-trusts: a Family Trust and a Marital Trust. According to the trust, the entire trust shall not be subject to amendment or revocation upon the death of the first settlor to die; however, the surviving settlor has general power of appointment over the marital trust. The fractional formula set forth in the trust will result in one-half of the assets distributable to the Family Trust, and one-half to the Marital Trust. Petitioner is the lifetime beneficiary of both trusts and upon her death, both sub-trusts are to be distributed pursuant to the <b>Schedule of Specific Distributions</b> with specific parcels gifted to the settlors' children <b>Gary Schnitzler, Marlene Jackson, and Steven Schnitzler</b> , and remaining balance in equal shares, or to his or her descendants, per stirpes.	
	<b>Aff.Sub.Wit.</b>	Petitioner states the assets consist of various real property related to farming operations, a vacation property in Morro Bay, and over 90% of the common stock in Schnitzler Farms, Inc., a California corporation. Settlor's son Gary Schnitzler farmed the properties for many years with his father and in the last approx. seven years, took on increased responsibility and was primarily responsible for farming and managing the business. Steven Schnitzler is a pharmacist and is not involved in farming. Marlene Jackson and her family have other substantial farming operations and are not involved in farming the Schnitzler properties.	
✓	<b>Verified</b>	In approximately early 2012, Attorney Michael Buettner met with Manfred and Lydia Schnitzler and they told him that they wished to make changes to their living trust and gave specific directions regarding the changes to be made. Gary summarized the changes by listing the properties that were to go to each beneficiary and Manfred and Lydia indicated that the proposed distribution on Gary's list was what they wanted. In particular, they wanted to change the specific gifts so that the majority of the farm assets and stock in Schnitzler Farms, Inc., were to be distributed to Gary, with Steven and Marlene receiving other assets. This differed completely from the proposed distributions of the original trust. Manfred and Lydia Schnitzler advised Mr. Buettner that they wished to have most of the farm properties go to Gary because he had devoted his life to farming them and much of the value of the farming operation was attributable to his efforts.	
	<b>Inventory</b>		
	<b>PTC</b>		
	<b>Not.Cred.</b>		
✓	<b>Notice of Hrg</b>		
✓	<b>Aff.Mail</b>	W	
	<b>Aff.Pub.</b>		
	<b>Sp.Ntc.</b>		
	<b>Pers.Serv.</b>		
	<b>Conf. Screen</b>		
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✓	<b>Order</b>		
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	<b>Status Rpt</b>		
	<b>UCCJEA</b>		
	<b>Citation</b>		
	<b>FTB Notice</b>		

**SEE ADDITIONAL PAGES**

## Page 2

Attorney Buettner drafted a restatement of the trust pursuant to the settlors' instructions and coordinated a meeting with all of the family members, including Manfred, Lydia, Gary, Steven, and Marlene, to go over the restated trust. However, Manfred went into the hospital on the day of the scheduled meeting and died a few days later.

Attorney Buettner discloses that he has served as attorney for Gary Schnitzler prior to the time that he served as attorney for Manfred and Lydia Schnitzler, and Gary Schnitzler stands to gain considerably from the proposed restatement of the trust.

Petitioner states the trust contains a so-called "spendthrift" clause that provides that interests in the trust cannot be alienated, which can be interpreted to allow settlors to alienate their interests, but to restrict other beneficiaries, namely remainder beneficiaries, from alienating their interests. Accordingly, this clause should not be an impediment to Petitioner's efforts to modify the trust.

Petitioner states she and Manfred Schnitzler established the trust with the assistance of an attorney in Roseville, California, who they did meet with personally, but Lydia believes the terms were never adequately explained to them. The attorney never explained the effect of the "spendthrift" clause and Lydia was not aware of its existence. The specific gifts of real property set forth did not correctly and completely identify the properties to be gifted, but Manfred and Lydia signed the document without examining it for correctness. See declaration of Lydia Schnitzler.

Probate Code § 15409 permits modification of a trust upon changed circumstances. Settlors did not intend that there be a spendthrift clause which would limit their ability to modify the trust in the future to comply with their wishes. They did not intend that neither one could change the terms of the trust when one of them died. They certainly did not intend that the surviving spouse be unable to amend or change the marital trust, which was the trust for the surviving spouse's one-half share of the community property.

The trust does not provide for distribution the way the settlors intended. Their intent was to have their assets pass to their children in the manner they wished to have them distributed. They did not intend that the surviving spouse have no control over where the assets go after the first spouse dies.

Petitioner states one of the purposes of the trust was to shield assets from taxes; however, at this time, they do not need a trust with an irrevocable bypass trust due to the increase in the estate tax exemption.

Petitioner states that although Manfred Schnitzler had health problems, his death was very sudden and the settlors did not anticipate that he would die before they could change the trust to provide for distribution of the assets according to their wishes. Nor did they anticipate that the entire trust would become irrevocable so that the survivor could not make changes or adjustments to provide for changed circumstances.

As a result of the inflexibility of the trust, the existence of an irrevocable family bypass trust, and the apparent inability of the surviving settlor to change even the marital trust consisting of the surviving spouse's shares, the continuation of the trust under its terms would defeat the accomplishment of the purposes of the trust, which are that the assets be distributed in accordance with the settlors' wishes.

Gary Schnitzler, Steven Schnitzler, and Marlene Jackson have all consented to the proposed modifications:

- That the Marital Trust continues to be subject to revocation and amendment by the surviving spouse upon the death of the first spouse to die
- That all assets of the trust upon the death of the first settlor to die be allocated to, distributable to, and held, managed and distributed pursuant to the terms of the Marital Trust.

Petitioner intends, upon receipt of the Court order, to either amend the Marital Trust or exercise her general power of appointment with respect to Marital Trust Property to provide for a distribution as previously set forth.

**Petitioner prays for an order approving and directing modifications of the trust as set forth in the petition.**

Atty

Kruthers, Heather H (for Public Guardian – Petitioner)

Atty

Sanoian, Joanne (Court appointed for Conservatee)

**Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820,  
1821, 2680-2682)**

<b>Age: 26</b>		<b><u>TEMPORARY EXPIRES 06/03/13</u></b>		<b>NEEDS/PROBLEMS/COMMENTS:</b>	
		<b>PUBLIC GUARDIAN</b> , is Petitioner and requests appointment as Conservator of the Person.		<b>Court Investigator Advised Rights on 05/22/2013.</b>	
<b>Cont. from</b>				<b>Voting Rights Affected Need Minute Order</b>	
	<b>Aff.Sub.Wit.</b>				
✓	<b>Verified</b>				
	<b>Inventory</b>				
	<b>PTC</b>				
	<b>Not.Cred.</b>				
✓	<b>Notice of Hrg</b>				
✓	<b>Aff.Mail</b>	w/			
	<b>Aff.Pub.</b>				
	<b>Sp.Ntc.</b>				
✓	<b>Pers.Serv.</b>				
	<b>Conf. Screen</b>				
✓	<b>Letters</b>				
	<b>Duties/Supp</b>				
	<b>Objections</b>				
	<b>Video Receipt</b>				
	<b>CI Report</b>				
	<b>9202</b>				
✓	<b>Order</b>				
	<b>Aff. Posting</b>				
	<b>Status Rpt</b>				
	<b>UCCJEA</b>				
✓	<b>Citation</b>				
	<b>FTB Notice</b>				

**PUBLIC GUARDIAN**, is Petitioner and requests appointment as Conservator of the Person.

**Capacity Declaration - Need**

**Petitioner states** that Mr. Camarillo is developmentally disabled, has a trusting nature and lack of discernment for his own safety. It is reported that Mr. Camarillo was abused by his father and several of his mother's boyfriends. His mother appears to neglect his needs and depends completely on his social security money for support. She has failed to seek medical attention for him in the past that resulted in a 2 day hospital stay. He also has a 53 year old boyfriend named Herardo, who appears to be asserting control over him. Given Robert's developmental disability, he is unable to care for and protect himself from harm. His mother appears to neglect him and his boyfriend does not seem to have his best interests in mind. Petitioner states that conservatorship is the least restrictive option to ensure Mr. Camarillo's health and safety.

Voting Rights Affected

**Court Investigator Jennifer Young's report filed 05/23/2013.**

**NEEDS/PROBLEMS/COMMENTS:**

**Court Investigator Advised Rights on 05/22/2013.**

**Voting Rights Affected Need Minute Order**

**Minute Order of 05/08/2013:** Also present in the courtroom are Anita Harper, Ms. Rios, Rosemary Camarillo, Ernesto Camarillo and Gerardo Martinez. Ms. Sanoian objects to the petition on behalf of her client. The Court finds that actual notice has been given to Robert Camarillo and Arturo Camarillo who are present in Court. The Court extends the temporary to 06/03/2013. The Court orders that neither conservatee be moved from the residence without a noticed hearing. The Court indicates to the parties that it will entertain an order shortening time if necessary. The Court orders that there be no adult males in the residence at any time with the exception of Ernesto Camarillo who may visit, but not remain in the residence after 5pm. The Court further orders that there be no abusive contact by any person with respect to both conservatees. Parties are directed to engage in a team meeting with CVRC and anyone else who may be involved in this matter. Counsel is directed to prepare the order.

1. Need Capacity Declaration

**Reviewed by:** LV

**Reviewed on:** 05/29/2013

**Updates:**

**Recommendation:**

**File 6 – Camarillo**

**Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820, 1821, 2680-2682)**

<b>Age: 28</b>		<b><u>TEMPORARY EXPIRES 06/03/13</u></b>		<b>NEEDS/PROBLEMS/COMMENTS:</b>	
		<b>PUBLIC GUARDIAN</b> , is Petitioner and requests appointment as Conservator of the Person.		<b>Court Investigator Advised Rights on 05/17/2013.</b>	
<b>Cont. from</b>		Capacity Declaration – <b>Need</b>		<b>Voting Rights Affected Need Minute Order</b>	
	<b>Aff.Sub.Wit.</b>				
✓	<b>Verified</b>				
	<b>Inventory</b>				
	<b>PTC</b>				
	<b>Not.Cred.</b>				
✓	<b>Notice of Hrg</b>				
✓	<b>Aff.Mail</b>				
	<b>Aff.Pub.</b>				
	<b>Sp.Ntc.</b>				
✓	<b>Pers.Serv.</b>				
	<b>Conf. Screen</b>				
✓	<b>Letters</b>				
	<b>Duties/Supp</b>				
	<b>Objections</b>				
	<b>Video Receipt</b>				
✓	<b>CI Report</b>				
	<b>9202</b>				
✓	<b>Order</b>				
	<b>Aff. Posting</b>				
	<b>Status Rpt</b>				
	<b>UCCJEA</b>				
✓	<b>Citation</b>				
	<b>FTB Notice</b>				

**Petitioner states** that Mr. Camarillo is developmentally disabled and has been receiving services for more than 8 years. It is reported that Mr. Camarillo has anger issues for which he takes medication. Mr. Camarillo currently lives in an apartment with his brother Robert and mother. His mother appears to be unable or unwilling to monitor Arturo in taking his medications. It is reported that Arturo was abused by his father and recently has been abused by several of his mother's boyfriends. He obtained a restraining order from one boyfriend. Arturo's father is expected to be released from jail at the end of April and Arturo has expressed that he wants his father to live with them. It is anticipated that if the father does return to live with him, he will again be abusive to Arturo and his brother Robert. If the father does not live with them, it is anticipated that the mother will allow her boyfriends to stay in the apartment. It is reported that Arturo fights back from the abuse but still gets injured. Petitioner states that conservatorship is the least restrictive option to ensure Mr. Camarillo's health and safety.

Voting Rights Affected  
**Court Investigator Jennifer L. Daniel's report filed 05/23/2013.**

**Minute Order of 05/08/2013:** Also present in the courtroom are Anita Harper, Ms. Rios, Rosemary Camarillo, Ernesto Camarillo and Gerardo Martinez. The Court finds that actual notice has been given to Robert Camarillo and Arturo Camarillo who are present in Court. The Court extends the temporary to 06/03/2013. The Court orders that neither conservatee be moved from the residence without a noticed hearing. The Court indicates to the parties that it will entertain an order shortening time if necessary. The Court orders that there be no adult males in the residence at any time with the exception of Ernesto Camarillo who may visit, but not remain in the residence after 5pm. The Court further orders that there be no abusive contact by any person with respect to both conservatees. Parties are directed to engage in a team meeting with CVRC and anyone else who may be involved in this matter. Counsel is directed to prepare the order.

1. Need Capacity Declaration

**Reviewed by:** LV

**Reviewed on:** 05/29/2013

**Updates:**

**Recommendation:**

**File 7 – Camarillo**

<b>DOD: 12/28/2012</b>		<b>TROY STOCKTON</b> , brother; <b>JOAN CALKIN</b> , sister; <b>CHUCK CALKIN</b> , nephew; <b>MELANIE CALKIN</b> , niece; are petitioners.	<b>NEEDS/PROBLEMS/COMMENTS:</b>  1. Order is incomplete at #9a regarding the personal and real property. Please describe the property including the legal description. The Order is also incomplete at #9b regarding each petitioner's name and specific property interest. Need new Order.
		40 days since DOD	
<b>Cont. from</b>		No other proceedings	
	<b>Aff.Sub.Wit.</b>		
✓	<b>Verified</b>		
	<b>Inventory</b>		
	<b>PTC</b>		
	<b>Not.Cred.</b>		
✓	<b>Notice of Hrg</b>		
✓	<b>Aff.Mail</b>	w/	
	<b>Aff.Pub.</b>		
	<b>Sp.Ntc.</b>		
	<b>Pers.Serv.</b>		
	<b>Conf. Screen</b>		
	<b>Letters</b>		
	<b>Duties/Supp</b>		
	<b>Objections</b>		
	<b>Video Receipt</b>		
	<b>CI Report</b>		
	<b>9202</b>		
✓	<b>Order</b>		
	<b>Aff. Posting</b>		
	<b>Status Rpt</b>		
	<b>UCCJEA</b>		
	<b>Citation</b>		
	<b>FTB Notice</b>		
I&A - <b>\$95,702.00</b>  Will dated: 01/25/2006  Petitioners request Court determination that decedent's 100% interest in real property located at 4454 E. Fountain Way, Fresno, Ca. pass ½ to Troy Stockton and ½ to Joan Calkin. <ul style="list-style-type: none"> <li>• Chuck Calkin- 100% interest in the following items: computer desk; computer printer; Indian figures; pots and pans; and dishes.</li> <li>• Melanie Calkin – 100% interest in the following items: nights stands (2); laptop computer; chicken pen; pation set; water hose; and Parekeets (2) with cage.</li> </ul> Pursuant to decedent's will.			
			<b>Reviewed by:</b> LV
			<b>Reviewed on:</b> 05/29/2013
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 8 – Stockton</b>

## Petition for Termination of Guardianship

Nathan, 8	SUSANA RAMIREZ, mother is Petitioner.		NEEDS/PROBLEMS/COMMENTS:
Alize, 7	LILIA HURTADO, maternal grandmother, was appointed guardian in July 2006 – <i>Consent to Termination and Waiver of Service and Notice of Hearing signed 04/01/13.</i>		
Cont. from			1. Need <b>Notice of Hearing</b> .  2. Need proof of service by mail at least 15 days before the hearing of <b>Notice of Hearing</b> with a copy of the <b>Petition for Termination of Guardianship</b> <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for: <ul style="list-style-type: none"> <li>- Fidencio Moreno (Nathan's father)</li> <li>- Irving Gervacio (Alizae's father)</li> <li>- Paternal grandparents (all)</li> <li>- Maternal grandfather</li> </ul>
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input type="checkbox"/>	Notice of Hrg	x	
<input type="checkbox"/>	Aff.Mail	x	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input checked="" type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
<p>Father (Nathan): NOT LISTED (<b>FIDENCIO MORENO</b>)</p> <p>Father (Alizae): NOT LISTED (<b>IRVING GERVACIO</b>)</p> <p>Paternal grandparents (both): NOT LISTED</p> <p>Maternal grandfather: NOT LISTED</p> <p><b>Petitioner</b> states that she wants to take full responsibility of her children.</p> <p><b>Court Investigator Charlotte Bien filed a report on 05/13/13.</b></p>			
Reviewed by: JF			
Reviewed on: 05/29/13			
Updates:			
Recommendation:			
File 9 – Moreno & Hurtado			

## **Petition for Appointment of Guardian of the Person (Prob. C. 1510)**

<b>Tony age: 1 year</b>		<b><u>TEMP EXPIRES 6-3-13</u></b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>
		<b>TERRY BEATRICE ALANIZ</b> , maternal grandmother, is petitioner.	<b>This petition is as to TONY ED CASTILLO, III only.</b> Guardianship was previously granted to Petitioner for Patience and Sincere on 1/10/11.
		Father: <b>TONY CASTILLO, Jr.</b> – personally served on 4/2/13.	
		Mother: <b>UNIQUE RIVERA</b> – Consents and waives notice	
		Paternal grandfather: Tony Castillo, Sr. – Declaration of Due Diligence filed 5-6-13	
		Paternal grandmother: Ann Perez – Served by mail 5-3-13	
		Maternal grandfather: Rudy Rivera - deceased	
		<b>Petitioner states</b> mother is in need of mental health but has not obtained the help. She lives in Modesto and on occasion comes to visit the children. She is still unable to care for them so her children are with Petitioner. The father is unable to care for them.	
		<b>Court Investigator Charlotte Bien filed a report on 5-22-13.</b>	
<input type="checkbox"/>	<b>Aff.Sub.Wit.</b>		
<input checked="" type="checkbox"/>	<b>Verified</b>		
<input type="checkbox"/>	<b>Inventory</b>		
<input type="checkbox"/>	<b>PTC</b>		
<input type="checkbox"/>	<b>Not.Cred.</b>		
<input checked="" type="checkbox"/>	<b>Notice of Hrg</b>		
<input checked="" type="checkbox"/>	<b>Aff.Mail</b>	w	
<input type="checkbox"/>	<b>Aff.Pub.</b>		
<input type="checkbox"/>	<b>Sp.Ntc.</b>		
<input checked="" type="checkbox"/>	<b>Pers.Serv.</b>	w	
<input checked="" type="checkbox"/>	<b>Conf. Screen</b>		
<input checked="" type="checkbox"/>	<b>Letters</b>		
<input checked="" type="checkbox"/>	<b>Duties/Supp</b>		
<input type="checkbox"/>	<b>Objections</b>		
<input type="checkbox"/>	<b>Video Receipt</b>		
<input checked="" type="checkbox"/>	<b>CI Report</b>		
<input checked="" type="checkbox"/>	<b>Clearances</b>		
<input checked="" type="checkbox"/>	<b>Order</b>		
<input type="checkbox"/>	<b>Aff. Posting</b>		
<input type="checkbox"/>	<b>Status Rpt</b>		
<input type="checkbox"/>	<b>UCCJEA</b>		
<input type="checkbox"/>	<b>Citation</b>		
<input type="checkbox"/>	<b>FTB Notice</b>		
			<b>Reviewed by:</b> skc
			<b>Reviewed on:</b> 5-29-13
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 10 – Castillo</b>

Sergio Rocha Age: 16		<b>TEMPORARY EXPIRES 06/03/2013</b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>
Estefanie Rocha Galvez Age: 12			
Cont. from 092712, 042913		<b>YADIRA NOEMI CAMPBELL &amp; LAUREN LEROY CAMPBELL</b> , sister and brother in law, are petitioners. Petitioners reside in Colorado Springs, Co.	<u>Minute Order of 04/29/2013:</u> Yadira Campbell is appearing via CourtCall. Ms. Campbell advises the Court that she was unable to start the guardianship process in Colorado as the children must reside there seven months before filing. Ms. Campbell further advises that neither she nor Lauren wish to proceed with the guardianship and it is her intent to return the children to California to be with her father, Ramiro Rocha and the grandparents. Ms. Campbell requests an extension of the temporary so the children can complete the school year in Colorado before returning to California. The Court extends the temporary 06/03/2013 with the understanding that the children will be returned to California and a petition for guardianship will be filed by either Ramiro Rocha or the grandparents.
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified	Father: <b>RAMIRO ROCHA DURAN</b> , consents and waives notice	<u>Minute Order of 09/27/2012:</u> The Court on its own motion grants a temporary guardianship in favor of Yadira Campbell and Lauren Campbell. The Court orders Yadira Campbell to establish a guardianship in Colorado. If proof of a guardianship is submitted to this court by 04/29/2013, no appearance will be necessary.  <u>Please see additional page</u>
<input type="checkbox"/>	Inventory	Mother: <b>OFELIA GALVEZ</b> , consents and waives notice	
<input type="checkbox"/>	PTC	Paternal Grandfather: Everado Rocha, consents and waives notice	
<input type="checkbox"/>	Not.Cred.	Paternal Grandmother: Socorro Duran Rocha, consents and waives notice	
<input type="checkbox"/>	Notice of Hrg	x	
<input type="checkbox"/>	Aff.Mail	x	
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.	n/a	
<input checked="" type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters		
<input checked="" type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input checked="" type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input checked="" type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		

**The following issues still remain:**

1. Need Notice of Hearing
2. Need proof of service fifteen (15) days prior to the hearing of the Notice of Hearing along with a copy of the Petition for Appointment of Guardian or consent and waiver of notice or declaration of due diligence for:
  - Maternal Grandparents (Not Listed) – Unless the Court dispenses with notice.

**Note:** Declaration of Due Diligence states that the maternal grandparents are believed to be residing in Mexico. Attempts were made to call the maternal grandparents however a busy signal was received or the number was not in service.

Atty Cualca, Sara Eliza Zarate (pro per – maternal grandmother/Petitioner)  
 Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Ruben, 12	<b>TEMPORARY EXPIRES 06/03/13</b>		<b>NEEDS/PROBLEMS/COMMENTS:</b>
Yahaira, 10	<b>SARA ELIZA ZARATE CUALCA</b> , maternal grandmother, is Petitioner.		1. Need proof of personal service at least 15 days before the hearing of <b>Notice of Hearing</b> with a copy of the <b>Petition for Appointment of Guardian of the Person</b> or Consent & Waiver of Notice or Declaration of Due Diligence for: - Victor Rojas Castellanos (Yahaira & Christopher's father) - Yeni Rodriguez Zarate (mother)  2. Need proof of service by mail at least 15 days before the hearing of <b>Notice of Hearing</b> with a copy of the <b>Petition for Appointment of Guardian of the Person</b> or Consent & Waiver of Notice or Declaration of Due Diligence for: - Jose Isabel Rodriguez Castaneda (maternal grandfather)
Christopher, 8	Father (Ruben): <b>RODOLFO SANCHEZ MARCIAL</b> – Court Dispensed with further notice on 04/10/13		
	Father (Yahaira & Christopher): <b>VICTOR ROJAS CASTELLANOS</b>		
Cont. from	Mother: <b>YENI RODRIGUEZ ZARATE</b>		
Aff.Sub.Wit.	Paternal grandparents (Ruben): UNKNOWN – Declaration of Due Diligence filed 04/15/13		
✓ Verified	Paternal grandfather (Yahaira & Christopher): <b>CONRADO ROJAS CORTEZ</b> – Served by mail on 04/15/13		
Inventory	Paternal grandmother (Yahaira & Christopher): <b>JUANITA CASTELLANOS BARBAS</b> – Served by mail on 04/15/13		
PTC	Maternal grandfather: <b>JOSE ISABEL RODRIGUEZ CASTANEDA</b>		
Not.Cred.	<b>Petitioner alleges</b> the mother moved to Mexicali to follow her husband who was deported. While in Mexico, she separated from her husband and began living with another man who is a drug addict. The mother is now abusing drugs and prostitutes herself. The mother's new boyfriend is abusive to the children. If the children were in Mexico with the mother, she would have all three of them begging in the streets.		
✓ Notice of Hrg	<b>Court Investigator Samantha Henson filed a report on 05/22/13.</b>		
✓ Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.	x		
✓ Conf. Screen			
✓ Letters			
✓ Duties/Supp			
Objections			
Video Receipt			
✓ CI Report			
9202			
Order	x		
Aff. Posting			
Status Rpt			
✓ UCCJEA			
Citation			
FTB Notice			
			<b>Reviewed by:</b> JF
			<b>Reviewed on:</b> 05/29/13
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 12 – Sanchez &amp; Rojas</b>

## Petition to Determine Succession to Real Property (Prob. C. 13151)

13

**Petition to Compel Trustee to Account [Prob. C. 17200(b)(7)]**

		<p><b>LEE VENTRESCA</b>, income beneficiary is Petitioner.</p> <p><b>Petitioner states:</b></p> <ol style="list-style-type: none"> <li>The VENTRESCA TRUST (the "Trust") was executed by Janice Hunter on 01/15/05.</li> <li>Since 01/15/05, Janice Hunter has been and is currently the trustee of the Trust. The principal place of administration of the Trust is Fresno.</li> <li>The trustee has never provided petitioner with an account of the Trust. Petitioner has sent a written demand to the trustee requesting that she provide Petitioner with an accounting but she has failed to do so.</li> </ol> <p><b>Petitioner prays for an Order:</b></p> <ol style="list-style-type: none"> <li>Instructing Janice Hunter, trustee, to prepare and file with this court an account of the Trust from 01/15/05 to present.</li> <li>Instructing Janice Hunter, trustee, to petition this court for a settlement of the account and give notice of the hearing.</li> <li>Allowing attorney's fees and costs.</li> </ol>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <ol style="list-style-type: none"> <li>The Petition is not verified. Need verification pursuant to Probate Code § 1021. (See also CCP § 2015.5)</li> <li>The Petition does not list all of the parties who are entitled to receive notice as required pursuant to Probate Code § 17201.</li> <li>The Petition states that a copy of the Trust is attached as Exhibit A, however no such attachment exists. The attachments filed separately on 04/24/13 include a demand for an accounting and copies of several grant deeds.</li> <li>Need Order.</li> </ol>
<b>Cont. from</b>			
<b>Aff.Sub.Wit.</b>			
<b>Verified</b>	x		
<b>Inventory</b>			
<b>PTC</b>			
<b>Not.Cred.</b>			
✓ <b>Notice of Hrg</b>			
<b>Aff.Mail</b>			
<b>Aff.Pub.</b>			
<b>Sp.Ntc.</b>			
✓ <b>Pers.Serv.</b>	w/		
<b>Conf. Screen</b>			
<b>Letters</b>			
<b>Duties/Supp</b>			
<b>Objections</b>			
<b>Video Receipt</b>			
<b>CI Report</b>			
<b>9202</b>			
<b>Order</b>	x		
<b>Aff. Posting</b>			
<b>Status Rpt</b>			
<b>UCCJEA</b>			
<b>Citation</b>			
<b>FTB Notice</b>			

<b>Reviewed by:</b> JF
<b>Reviewed on:</b> 05/29/13
<b>Updates:</b>
<b>Recommendation:</b>
<b>File 14 – Ventresca</b>

Pro Per Elmfors, Tamarra Leigh Cadd (Pro Per Petitioner)

**Petition to Determine Succession to Real Property and Personal Property  
(Prob. C. 13151)**

<b>DOD: 2/23/2013</b>		<b>TAMARRA LEIGH CADD ELMFORS</b> (relationship to Decedent unstated), is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
		40 days since DOD	1. <i>Petition</i> is signed by <b>DEBORAH L. ATKINSON</b> , an unidentified party, and Petitioner Tamarra Elmfors. It is unclear whether Petitioner intends to be the sole Petitioner, or intends Deborah Atkinson to be Co-Petitioner, though Ms. Atkinson is not named on any of the pleadings other than at the signature line of the <i>Petition</i> . Need clarification regarding whether Deborah L. Atkinson claims an interest in the subject real property and/or personal property.
<b>Cont. from</b>			
<input type="checkbox"/>	<b>Aff.Sub.Wit.</b>		2. Need <i>Attachment 11</i> to the <i>Petition</i> containing: <b>(a)</b> the legal description of the real property and its Assessor's Parcel Number (APN) pursuant to Probate Code § 13152(a)(3), and a description of the personal property; and <b>(b)</b> the percent of Decedent's interest in the property.
<input checked="" type="checkbox"/>	<b>Verified</b>	No other proceedings	
<input checked="" type="checkbox"/>	<b>Inventory</b>		3. Item 13 of the <i>Petition</i> does not state the specific property interest claimed by each petitioner in the real property and personal property.
	<b>PTC</b>		
	<b>Not.Cred.</b>	I & A - \$ 149,523.76	~Please see additional page~
	<b>Notice of Hrg</b>	X Decedent died intestate.	
	<b>Aff.Mail</b>	X	<b>Reviewed by:</b> LEG
	<b>Aff.Pub.</b>		
	<b>Sp.Ntc.</b>		<b>Reviewed on:</b> 5/29/13
	<b>Pers.Serv.</b>		
	<b>Conf. Screen</b>	<b>Petitioner requests</b> Court determination that Decedent's <b>[unspecified %]</b> interest in real property located at 6580 N. Sierra Vista, Fresno, and <b>[unspecified]</b> personal property, passes to the Petitioner pursuant to intestate succession.	<b>Updates:</b>
	<b>Letters</b>		
	<b>Duties/Supp</b>		<b>Recommendation:</b>
	<b>Objections</b>		
	<b>Video Receipt</b>		<b>File 15 – Elmfors</b>
	<b>CI Report</b>		
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<input checked="" type="checkbox"/>	<b>Order</b>		
	<b>Aff. Posting</b>		
	<b>Status Rpt</b>		
	<b>UCCJEA</b>		
	<b>Citation</b>		
	<b>FTB Notice</b>		

**NEEDS/PROBLEMS/COMMENTS, continued:**

4. Item 14 of the *Petition* is incomplete, as it does not list the names, relationships to Decedent, ages and residence or mailing addresses so far as known to or reasonably ascertainable by the Petitioner of all persons claiming an interest in the property, any spouse and children of Decedent, and all other heirs of Decedent. Need *Attachment 14* to the *Petition* containing this information.
5. Pursuant to Probate Code § 13153, need proof of mailed service of *Notice of Hearing* for all persons required to be served with notice pursuant to Probate Code § 13152(a)(7). (Note: Item 14 of *Petition* does not list any persons who would be entitled to notice, as noted above.)
6. *Final Inventory and Appraisal* attached to the *Petition* identifies the ESTATE OF ELLEN PAULINE CADD, while the *Petition* identifies the matter as PAULINE CADD ELMFORS. Need clarification regarding the correct name of Decedent's estate.
7. Proposed order does not but should include in Item 9(a) a description of the personal property as well as the real property. In addition, proposed order must include in Item 9(b) all persons claiming an interest in the real and personal property, including Deborah L. Atkinson, if it is confirmed that she claims an interest, and the specific property interest claimed by each. Need revised proposed *Order Determining Succession to Real Property* containing the legal description of the real property and specifying the percentage of each Petitioners' property interest.



Petition for Appointment of Temporary Guardianship of the Person (Prob. C. 2250)

<b>Madison Marroquin</b> <b>Age: 5</b>		<b>TEMP GRANTED EX PARTE EXPIRES 6-3-13</b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>  <u>Note:</u> This petition pertains to Madison (5) only. The petition at Page 16A pertains to Haylee (8).  1. Need proof of personal service of Notice of Hearing with a copy of the Temp Petition at least five court days prior to the hearing per Probate Code §2250(e) <u>or</u> consent and waiver of notice <u>or</u> declaration of due diligence on: - Rodrigo Marroquin (father)
		<b>GENERAL HEARING 7-23-13</b>	
		<b>IRMA OLIVAREZ</b> , Paternal Aunt, is Petitioner.	
		Father: <b>RODRIGO MARROQUIN</b>	
		Mother: <b>MARINA J. MARROQUIN</b> - Consents and waives notice	
		Paternal Grandfather: Manuel Marroquin - Deceased	
		Paternal Grandmother: Audina Sagrero	
		Maternal Grandfather: Unknown	
		Maternal Grandmother: Unknown	
		Siblings: Not listed	
		<b>Petitioner states</b> the parents are abusing drugs and the children are being neglected. The house is filthy, dirty dishes, dirty clothing, rats. Money obtained for the children is misused and their food stamps are sold. Nevertheless, the mother was allowed to keep six of their eight children. Madison was allowed to come with this Petitioner and Haylee was allowed to go with the Petitioner at Page 16A. The mother is not happy with the decision and wants the girls back in her care. Therefore, temporary guardianship is necessary.	
<input type="checkbox"/>	<b>Aff.Sub.Wit.</b>		
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<input type="checkbox"/>	<b>Objections</b>		
<input type="checkbox"/>	<b>Video Receipt</b>		
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<input type="checkbox"/>	<b>Citation</b>		
<input type="checkbox"/>	<b>FTB Notice</b>		
			<b>Reviewed by:</b> skc
			<b>Reviewed on:</b> 5-29-13
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 16B – Marroquin</b>

16B

Petition for Appointment of Temporary Guardianship of the Person (Prob. C. 2250)

Age: 7 months		<b><u>TEMPORARY GRANTED EX PARTE;</u></b> <b><u>EXPIRES 06/03/13</u></b>  <b><u>GENERAL HEARING 07/23/13</u></b>	<b>NEEDS/PROBLEMS/COMMENTS:</b>  1. Need <i>Notice of Hearing</i> .  2. Need proof of personal service at least 5 court days before the hearing of <i>Notice of Hearing</i> with a copy of the <i>Petition for Appointment of Temporary Guardian of the Person</i> <u>or</u> Consent & Waiver of Notice <u>or</u> Declaration of Due Diligence for: - Cecilia Marroquin (mother)  3. Petitioner answered yes to #3 on the <i>Confidential Guardian Screening Form</i> re: I have been charged with, arrested for, or convicted of a crime deemed to be a felony or misdemeanor but did not provide an explanation. Need more information.																																																																			
Cont. from <table border="1"> <tr> <td></td> <td>Aff.Sub.Wit.</td> <td></td> </tr> <tr> <td>✓</td> <td>Verified</td> <td></td> </tr> <tr> <td></td> <td>Inventory</td> <td></td> </tr> <tr> <td></td> <td>PTC</td> <td></td> </tr> <tr> <td></td> <td>Not.Cred.</td> <td></td> </tr> <tr> <td></td> <td>Notice of Hrg</td> <td>x</td> </tr> <tr> <td></td> <td>Aff.Mail</td> <td></td> </tr> <tr> <td></td> <td>Aff.Pub.</td> <td></td> </tr> <tr> <td></td> <td>Sp.Ntc.</td> <td></td> </tr> <tr> <td></td> <td>Pers.Serv.</td> <td>x</td> </tr> <tr> <td>✓</td> <td>Conf. Screen</td> <td></td> </tr> <tr> <td></td> <td>Letters</td> <td>x</td> </tr> <tr> <td>✓</td> <td>Duties/Supp</td> <td></td> </tr> <tr> <td></td> <td>Objections</td> <td></td> </tr> <tr> <td></td> <td>Video Receipt</td> <td></td> </tr> <tr> <td></td> <td>CI Report</td> <td></td> </tr> <tr> <td></td> <td>9202</td> <td></td> </tr> <tr> <td></td> <td>Order</td> <td>x</td> </tr> <tr> <td></td> <td>Aff. Posting</td> <td></td> </tr> <tr> <td></td> <td>Status Rpt</td> <td></td> </tr> <tr> <td>✓</td> <td>UCCJEA</td> <td></td> </tr> <tr> <td></td> <td>Citation</td> <td></td> </tr> <tr> <td></td> <td>FTB Notice</td> <td></td> </tr> </table>					Aff.Sub.Wit.		✓	Verified			Inventory			PTC			Not.Cred.			Notice of Hrg	x		Aff.Mail			Aff.Pub.			Sp.Ntc.			Pers.Serv.	x	✓	Conf. Screen			Letters	x	✓	Duties/Supp			Objections			Video Receipt			CI Report			9202			Order	x		Aff. Posting			Status Rpt		✓	UCCJEA			Citation		
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HELEN RILEY, paternal aunt, is Petitioner.  Father: <b>EDWARD VENEGAS</b> – Consent & Waiver of Notice filed 05/21/13  Mother: <b>CECILIA MARROQUIN</b>  Paternal grandfather: JOE VENEGAS Paternal grandmother: MARY VENEGAS – deceased  Maternal grandfather: RAY MARROQUIN Maternal grandmother: UNKNOWN  <b>Petitioner alleges</b> that the mother is on the run from authorities and has a warrant out for her arrest. The father is a truck driver and is unable to care for the child. The mother is on drugs and Petitioner is concerned for the child's safety while in her mother's care as she is homeless and may be taking the child to drug houses. CPS is also looking for the mother because she failed to attend rehab. Petitioner states that she has a good home and can provide a safe and healthy environment for the child. Petitioner fears that the mother will abscond with the child when she finds out about the guardianship petition, therefore temporary guardianship is needed as soon as possible.		<table border="1"> <tr> <td><b>Reviewed by:</b> JF</td> </tr> <tr> <td><b>Reviewed on:</b> 05/29/13</td> </tr> <tr> <td><b>Updates:</b></td> </tr> <tr> <td><b>Recommendation:</b></td> </tr> <tr> <td><b>File 17 – Marroquin</b></td> </tr> </table>	<b>Reviewed by:</b> JF	<b>Reviewed on:</b> 05/29/13	<b>Updates:</b>	<b>Recommendation:</b>	<b>File 17 – Marroquin</b>																																																															
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<b>File 17 – Marroquin</b>																																																																						

18 Linda Aryn Gomez (GUARD/P)

Case No. 13CEPR00221

Atty Rosas, Monica Christina

Atty gomez, Sebastian Gilbert

Petition for Appointment of Temporary Guardianship of the Person (Prob. C. 2250)

Age:		NEEDS/PROBLEMS/COMMENTS:  <b><u>OFF CALENDAR</u></b> Petition denied on 05/20/13 during hearing on a competing petition
DOD:		
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UCCJEA		
Citation		
FTB Notice		
Reviewed by: JF		
Reviewed on: 05/29/13		
Updates:		
Recommendation:		
File 18 – Gomez		

18

Continued Hearing By Court Re: First Amended Petition Seeking: (1) Recovery for Respondents' Intentional Interference with Petitioner's Right to Inherit; (2) Recovery for Respondents' Negligent Interference with Petitioner's Right to Inherit; and (3) an Interpretation of Trust Instruments [Prob. C. 17200(b)(1) & (3)]

<b>Elizabeth A. McCann</b> ("Mrs. McCann") DOD: 8-7-10	<b>DANIEL J. MCCANN</b> , Trust beneficiary, co-trustee, and adult son of Trustors, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
<b>John P. McCann</b> ("Dr. McCann") DOD: 10-12-06	<b>COLLEEN E. DEMPSEY</b> and <b>JOHN P. MCCANN</b> , Trust beneficiaries, co-trustees, and adult children of Trustors, are Respondents.	<b>Note:</b> These Examiner Notes were prepared for the first hearing on this Amended Petition on 5-10-12, which, according to the attorneys, was to be treated as a status conference only due to ongoing discovery in progress.
Cont. from 051012, 062512, 100112, 111412, 012213, 031913, 050613, 052313	<b>This First Amended Petition filed 3-7-12</b> alleges three (3) causes of action.	<u>Therefore, these Examiner Notes summarize the points of the Stipulation with reference to the First Amended Petition, rather than providing summary review of the First Amended Petition.</u>
<b>Aff.Sub.Wit.</b>	The Stipulation also states that, absent the stipulation, Respondents would file a Motion to Strike the allegations of certain facts relating to whether the law firm representing Respondents should have or failed to verify the competency of Trustor Mrs. McCann prior to executing the Second and Third Amendments to the Trust. However, in the Stipulation, Petitioner agrees that he will not seek to disqualify the firm based on the allegations.	The matter has been continued since 1-10-12, and a separate petition has also been filed by Respondents (See Page 1B).
<b>Verified</b>	The Stipulation provides that Respondents will file an answer to the allegations of the Third Cause of Action within 20 days of the filing of the Stipulation. (Answer filed 5-9-12)	Page 1C is a new petition filed by Daniel McCann.
<b>Inventory</b>	The Stipulation further agreement regarding possible future petitions for removal of Respondents as successor trustees, or for accounting, and states that a Petition for accounting will be provided within 60 days of the Stipulation, and Petitioner will not file a petition for removal of Respondents as successor trustees, or for accounting, within 60 days of the Stipulation.	See Page 2 for history per Court records.
<b>PTC</b>	In addition, the Stipulation provides that Petitioner will provide certain documents to Respondent within 60 days of the Stipulation.	<b>Reviewed by:</b> skc
<b>Not.Cred.</b>	On 5-9-12, Respondents filed an <u>Answer to First Amended Petition (Third Cause of Action only)</u> and also filed a <u>Petition for Order Compelling Predecessor Trustee to Account for Trust Assets and Expenditures and to Redress Breach of Trust, Directing Transfer of Property to Successor Trustees, and Awarding Statutory Damages</u> that was set for hearing on 6-25-12.	<b>Reviewed on:</b> 5-29-13
<b>Notice of Hrg</b>		<b>Updates:</b>
<b>Aff.Mail</b>		<b>Recommendation:</b>
<b>Aff.Pub.</b>		File 1A - McCann
<b>Sp.Ntc.</b>		
<b>Pers.Serv.</b>		
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<b>Duties/Supp</b>		
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<b>Status Rpt</b>		
<b>UCCJEA</b>		
<b>Citation</b>		
<b>FTB Notice</b>		

**Page 2 – History**

Daniel McCann's original petition was filed 2-28-11 in San Francisco Superior Court. The parties stipulated to a change of venue to Fresno Superior Court. Demurrer was filed 12-14-11.

On 2-22-12, the Court entered its Order Sustaining Demurrer to Petition of Daniel J. McCann, with Leave to Amend.

**3-7-12 – Daniel J. McCann filed the instant Amended Petition and requests judgment as follows:**

1. For a determination that respondents and all beneficiaries were properly served;
2. That respondents negligently interfered with Petitioner's right to inherit, or intentionally interfered with Petitioner's right to inherit;
3. For compensatory damages in according to proof;
4. For punitive damages according to proof;
5. For a judicial determination of the validity and enforceability of the Second and Third Amendments to Surviving Trustor's Trust and Exercise of Powers of Appointment; and
6. That the court order respondents to pay Petitioner's costs and legal fees incurred to file this petition.

**4-16-12** – The Court entered an Order on Stipulation of Parties to Stay Certain causes of Action, to Respond to other causes of Action in the First Amended Petition, and to Resolve other Matters

**5-9-12** – Respondents filed Petition for Order Compelling Predecessor Trustee to Account for Trust Assets and Expenditure and to Redress Breach of Trust, Directiong Transfer of Property to Successor Trustees and Awarding Statutory Damages (Prob. C. 17200, 16061, 16420, 850 & 859) [by fax]; Hearing set for 6-25-12 at 9am in Dept 303

**Minute Order 5-10-12 (Daniel McCann's Petition):** Matter set for Status Conference on 6/25/12. The Court directs that the new petition be set for 6/25/12 at 1:30 p.m. Counsel is directed to file his response to the new petition within 30 days. Continued to 6/25/12, 1:30 p.m., Dept. 303  
Set on 6/25/12, 1:30 p.m., Dept. 303 for Status Conference

**Minute Order 6-25-12 (Daniel McCann's Petition):** Continued to 10-1-12.

**Minute Order 6-25-12 (Respondents' Petition):** Continued to 10-1-12.

**Minute Order 6-25-12 (Status Hearing):** Mr. Judd and Mr. Foreman are appearing via conference call. Matter continued to 10/1/12 at 1:30 p.m. with the understanding that should both counsel desire to have a settlement conference on that date, all counsel will need to appear at 10:30 a.m. and settlement conference briefs will need to be submitted one week in advance. Counsel is directed to notify the Clerk if a settlement conference is requested. Continued 10/1/12 at 1:30 PM in Dept. 303.

**Minute Order 10-1-12 (Daniel McCann's Petition):** Continued to 11-14-12.

**Minute Order 10-1-12 (Respondents' Petition):** Continued to 11-14-12.

**Minute Order 10-1-12 (Status Hearing):** Nature of Hearing: Status Conference with Possible Settlement Conference; Mr. Foreman and Mr. Judd are appearing via conference call. Matter continued to 11/14/12. Counsel is directed to submit status conference statements before the next hearing.

**Minute Order 11-14-12 (Daniel McCann's Petition):** Continued to 1-22-13.

**Minute Order 11-14-12 (Respondents' Petition):** Continued to 1-22-13.

**Minute Order 11-14-12 (Status Hearing with Possible Settlement):** Continued to 1-22-13.

**Minute Order 1-22-13 (Daniel McCann's Petition):** Continued to 3-19-13.

**Minute Order 1-22-13 (Respondents' Petition):** Continued to 3-19-13.

**Minute Order 1-22-13 (Status):** Mr. Judd informs the Court that they are on schedule with respect to getting the information.

**Page 3 – History (Cont'd)**

**Minute Order 3-19-13 (Daniel McCann's Petition):** Continued to 5-6-13.

**Minute Order 3-19-13 (Respondents' Petition):** Continued to 5-6-13.

**Minute Order 3-19-13 (Status):** Mr. Judd informs the Court that they are on schedule with respect to Mr. Judd is appearing via conference call. Mr. Foreman advises the Court that Ms. Burnside is appearing as co-counsel. Mr. Foreman informs the Court that they were unable to resolve this matter. At the request of counsel, the Court sets a Discovery Meeting for 5/6/13. Counsel is directed to submit their relevant documents along with courtesy copies for the Court by 4/22/13. Continued to 5/6/13 @ 1:30 p.m. Dept. 303; Set on 5/6/13 @ 1:30 p.m. Dept. 303 for: Discovery Meeting

**4-12-13: Daniel McCann filed Petition for Instructions Prohibiting Trustees from Using Trust Funds to Defend the First Amended Petition (Prob. C. 17200) – set for hearing 6-3-13 at 9am in Dept 303**

**4-22-13:** Documents submitted for 5-6-13 Discovery Meeting:

- Declaration by Daniel McCann is filed.
- Trustees documents are unfiled due to possible status as discovery motion requiring fee and noticed hearing.

**4-23-13:** Trustees' Ex Parte Petition Approving Continuation of Business by Co-Trustees is Denied.

**Minute Order 5-6-13 (Daniel McCann's Petition):** Continued to 5-23-13.

**Minute Order 5-6-13 (Respondents' Petition):** Continued to 5-23-13.

**Minute Order 5-6-13 (Status):** See 1D for further details

**Minute Order 5-6-13 (Discovery Meeting):** The Court directs the parties to set forth the information they have in the form of a discovery motion. Parties are directed to file their motions by 5/20/13. Matter set for Status Hearing on 5/23/13 for the limited purpose of setting a date for hearing on the discovery motion. Parties are authorized to appear via CourtCall. Set on 5-23-13 at 9am in Dept 303 for Status Hearing Re: Setting Hearing Date for Discover Motion.

**5-20-13:** Discovery motions filed, set for hearing 7-11-13

**5-20-13:** Petition Approving Continuation of Business by Co-Trustee, Memorandum of Points and Authorities filed, set for hearing 7-11-13

**Minute Order 5-23-13 (Daniel McCann's Petition):** Continued to 6-3-13.

**Minute Order 5-23-13 (Respondents' Petition):** Continued to 6-3-13.

**5-29-13: Opposition to Daniel McCann's petition filed 4-12-13 set for 6-3-13 is filed.**

Elizabeth A. McCann ("Mrs. McCann") DOD: 8-7-10		COLLEEN E. DEMPSEY and JOHN P. MCCANN, Trustees of the JOHN P. MCCANN AND ELIZABETH A. MCCANN DECLARATION OF TRUST dated 4-2- 99, as amended, are Petitioners.	NEEDS/PROBLEMS/COMMENTS:																																												
John P. McCann ("Dr. McCann") DOD: 10-12-06																																															
Cont. from 012213, 031913, 050613, 052313		Petitioners allege that upon reviewing trust records following Mrs. McCann's death, the Trustees discovered a number of substantial unexplained and unsubstantiated expenditures from trust accounts that were made by Daniel J. McCann ("Respondent" herein) while he was living with his mother and had taken control of those accounts. Expenditures included payments of \$781,966.39 to American Express for Respondent's personal credit card bills; and approx. \$225,000 of additional unexplained, unsupported expenditures for his personal benefit.	<p><b>Note:</b> Daniel McCann filed Response, Objections and Opposition to this petition on 6- 22-12 and requests that this petition be denied and the Court award Respondent costs.</p> <p>1. The petition does not state the names and addresses of each person entitled to notice of the petition pursuant to Probate Code §17201.</p>																																												
<table border="1"> <tr><td>Aff.Sub.Wit.</td><td></td></tr> <tr><td>Verified</td><td></td></tr> <tr><td>Inventory</td><td></td></tr> <tr><td>PTC</td><td></td></tr> <tr><td>Not.Cred.</td><td></td></tr> <tr><td>Notice of Hrg</td><td></td></tr> <tr><td>Aff.Mail</td><td></td></tr> <tr><td>Aff.Pub.</td><td></td></tr> <tr><td>Sp.Ntc.</td><td></td></tr> <tr><td>Pers.Serv.</td><td></td></tr> <tr><td>Conf. Screen</td><td></td></tr> <tr><td>Letters</td><td></td></tr> <tr><td>Duties/Supp</td><td></td></tr> <tr><td>Objections</td><td></td></tr> <tr><td>Video Receipt</td><td></td></tr> <tr><td>CI Report</td><td></td></tr> <tr><td>9202</td><td></td></tr> <tr><td>Order</td><td></td></tr> <tr><td>Aff. Posting</td><td></td></tr> <tr><td>Status Rpt</td><td></td></tr> <tr><td>UCCJEA</td><td></td></tr> <tr><td>Citation</td><td></td></tr> <tr><td>FTB Notice</td><td></td></tr> </table>				Aff.Sub.Wit.		Verified		Inventory		PTC		Not.Cred.		Notice of Hrg		Aff.Mail		Aff.Pub.		Sp.Ntc.		Pers.Serv.		Conf. Screen		Letters		Duties/Supp		Objections		Video Receipt		CI Report		9202		Order		Aff. Posting		Status Rpt		UCCJEA		Citation	
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<p>Petitioners state Respondent was acting in a fiduciary capacity during this time as his mother's primary caretaker, for which he was compensated. Moreover, he restricted his mother's access to financial information and statements, and had formally been appointed as a co-trustee, but refused to relinquish his exclusive control over the assets to the other co- trustees until Mrs. McCann moved out of the property where he had been residing with her. Therefore, he was acting as <i>de facto</i> sole trustee when the expenditures were made which Petitioners believe constituted breach of trust. Respondent should be ordered to account and produce all documents, supporting receipts, and other information relevant to their nature and purpose, and should be ordered to return or reimburse funds to the trustees with interest.</p> <p>Petitioners also state Respondent was granted a bare title interest in the Vermont property for convenience only (to perform interior design services) with no intent that he receive the property over and above his equal share of the trust.</p> <p>Petitioners state Respondent's name was put on title but he did not receive any beneficial ownership interest. No gift tax returns were ever filed to report this change of title.</p>		<table border="1"> <tr><td>Reviewed by: skc</td></tr> <tr><td>Reviewed on: 5-29-13</td></tr> <tr><td>Updates:</td></tr> <tr><td>Recommendation:</td></tr> <tr><td>File 1B - McCann</td></tr> </table>	Reviewed by: skc	Reviewed on: 5-29-13	Updates:	Recommendation:	File 1B - McCann																																								
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File 1B - McCann																																															
<b><u>SEE ADDITIONAL PAGES</u></b>																																															

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After Dr. McCann died, Mrs. McCann reported the property on his federal estate tax return as jointly owned by them only – Respondent's bare title interest was not mentioned.

Likewise, in a verified "Heggstad" petition filed by Mrs. McCann on 8-8-07 in Marin County Superior Court (Case No. PRO 073729) as successor trustee, the property was reported as community property of Dr. and Mrs. McCann to be conveyed and distributed as part of the trust. There was no reference to Respondent having an interest in the property.

Finally, the Property was specifically allocated to the Marital Trust when the Trust was divided. Thus, Mrs. McCann always intended and understood that all beneficial ownership was held by and would pass pursuant to the trust.

Petitioners state that when Respondent was confronted with documentation of his name on the title to the property, he executed a quitclaim deed back to his parents on 4-11-07. However, the deed was never recorded.

The First Amendment to the trust expressly provides that the property shall be allocated to Respondent as part of his equal share of the trust if he so elects. This arrangement was discussed when the successor trustee appointments were made and executed. He expressed satisfaction with this arrangement on both occasions.

However, on 8-8-08, Respondent had Mrs. McCann execute a Warranty Deed restoring his joint tenancy interest in the property, and concealed this from the trustees. This deed was not prepared by the estate-planning attorney in Maine, and the attorney also did not prepare two other documents purportedly signed in January 09 which purport to give Respondent the contents of the property and forgive any debts to her.

Respondent failed to inform the trustees of the Warranty Deed until after Mrs. McCann's death when he transferred the names on the various accounts for the property into his own name, and for the first time since his name had been placed on title, paid property taxes and insurance from his own funds.

In Oct 2010, he hired an attorney to commence his challenge of the trust and formally assert the position that he owns the property outright as surviving joint tenant, repudiating the long-term agreement that the joint tenancy was simply and unequivocally an accommodation for his convenience.

Respondent holds title to the property subject to a resulting trust or constructive trust fbo the trust and should be ordered to quitclaim all of his interest to the trustee.

In addition, Petitioners state Respondent has wrongfully taken, concealed and disposed of other property of Mrs. McCann and the trust. He gained access to the real property in Maine without authorization, changed locks, removed tangible personal property of the trust including four expensive oil paintings, a mink coat, and other valuables. He used trust funds to purchase a new Mercedes Benz for his sole personal use, and made other unsupported expenditures, cash withdrawals and payments that cannot be traced to any valid trust purpose. He threw lavish parties at the Property and the Maine property, travelled frequently at the trust's expense, and otherwise spent trust money as if trust assets were his own assets.

**Petitioners provide authority for the foregoing petition and pray for an order:**

- 1. That the Trust and all Amendments thereto are valid;**
- 2. Directing Respondent, as former Trustee, to produce all documents and records, including supporting receipts, for the expenditures identified in Exhibits M and N to this petition;**
- 3. Directing Respondent to return to, or reimburse, the Trust for all assets wrongfully taken, with interest at the legal rate;**
- 4. Directing Respondent to pay the Trustees an amount equal to twice the value of all assets recovered herein pursuant to Probate Code §859;**
- 5. Directing that Petitioners' Attorneys' fees and costs herein be charged against Respondent's share of the Trust upon final distribution; and**
- 6. For such other and further relief as the Court deems appropriate.**

**Petition for Instructions Prohibiting Trustees from Using Trust Funds to Defend the First Amended  
Petition (Prob. C. 17200)**

<b>Age:</b>			<b>NEEDS/PROBLEMS/COMMENTS:</b>  Examiner notes not prepared for this matter.  <u>Note to Judge:</u> Please see memo from Research Attorney.
<b>DOD:</b>			
<b>Cont. from</b>			
<b>Aff.Sub.Wit.</b>			
<b>Verified</b>			
<b>Inventory</b>			
<b>PTC</b>			
<b>Not.Cred.</b>			
<b>Notice of Hrg</b>			
<b>Aff.Mail</b>			
<b>Aff.Pub.</b>			
<b>Sp.Ntc.</b>			
<b>Pers.Serv.</b>			
<b>Conf. Screen</b>			
<b>Letters</b>			
<b>Duties/Supp</b>			
<b>Objections</b>			
<b>Video Receipt</b>			
<b>CI Report</b>			
<b>9202</b>			
<b>Order</b>			
<b>Aff. Posting</b>			
<b>Status Rpt</b>			
<b>UCCJEA</b>			
<b>Citation</b>			
<b>FTB Notice</b>			
		<b>Reviewed by:</b> skc <b>Reviewed on:</b> 5-29-13 <b>Updates:</b> <b>Recommendation:</b> <b>File 1C - McCann</b>	

1C